IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1297 of 2002

Judgment reserved on 15.5.2007

Date of decision 12.6.2007

Smt.Indira Petitioner

Vs.

State of H.P. and others Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. K.D.Sood, Advocate.

For the Respondents : Mr.M.S.Chandel, Advocate General, with, Mr.M.A.Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.

Rajiv Sharma, J.

By way of this petition the petitioner has sought the following reliefs:

a) quash the orders Annexures P-1 and P-2;

b) Prohibit the respondents from executing the orders Annexures P-1 and P-2 and recovering the compensation of Rs.53,025/- and future rent at Rs.200/- per year and ejectment of the petitioner from the land;

c) Direct the production of all the relevant records;

d) Allow cost of the petition and

e) Allow any other relief to which the petitioner is found entitled to.

The brief facts necessary for the adjudication of this petition are that on the basis of a complaint received from the Forest Guard, Range Officer

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

Jari, a notice was issued to the petitioner on 26.3.1997 under sub section (1) of Section 4 of the H.P. Public Premises and Land (Eviction & Rent Recovery) Act, 1971 here-in-after referred to as the Act. The petitioner had filed reply to the show cause notice denying the contents of the notice and had *interalia* pleaded that her husband was in possession of the land in dispute for more than 40 years ago and he made it cultivable. It has also averred in the reply that the petitioner had become owner of the land in dispute by virtue of adverse possession and as such Collector had no jurisdiction to initiate proceedings under the Act ibid.

The Collector-cum-Divisional Forest Officer had framed the following issues :

i) Whether the respondent has encroached upon III class Govt. forest land ? OPC

ii) Whether the respondent has got dried the trees by lopping which are standing over on the encroached forest land ? OPC

iii) Whether the court has no jurisdiction to initiate the proceedings of the present case ? OPR

iv) Relief.

The Collector-cum-D.F.O. recorded following findings on the aforesaid issues:

i) Yes,

ii) Not decided as this Court has no jurisdiction to try the case under Section 33 I.F.A.. In this regard case is stated to be filed in the Hon'ble C.J.M. Court Kullu for trial and the matter shall be decided by the said court.

iii) No.

iv) Eviction order issued.

The Collector-cum-D.F.O. had passed the judgment on 21.6.2000 holding that the petitioner had illegally encroached upon and taken into possession Government forest land, measuring 3.13 bighas along with 3 deodar and 11 broad leave tress of different classes which are standing inside the encroached land in UPF Harkandi III. The learned Collector-

cum-D.F.O. had ordered the eviction of the petitioner and further ordered that a sum of Rs.53025/- on account of rental value be recovered from the petitioner. Besides this the Collector-cum-D.F.O. had ordered that an additional rental value of Rs.200/- per biswa per year was liable to be recovered from the respondent till the unauthorized possession of government forest land was vacated by her.

The petitioner feeling aggrieved by the order dated 21.6.2000 had preferred an appeal before the Commissioner (Revenue) Himachal Pradesh on 5.9.2000. The learned Commissioner (Revenue) had dismissed the appeal on 10.6.2002.

Mr.K.D.Sood, learned counsel appearing on behalf of the petitioner, had argued that the orders Annexure P-1 and Annexure P-2 are not sustainable in the eye of law, more particularly, when the petitioner was not present at the time of demarcation. Mr.M.S.Chandel, learned Advocate General, appearing on behalf of the respondents had supported the orders dated 21.6.2000 and 10.6.2002.

I have heard the learned counsel for the parties and perused the record.

The respondent State has produced as many as eight witnesses to substantiate its case. Sh.Chet Ram Kaundal, Tehsider while appearing as PW-1 had stated that at the spot Patwari, Girdwar halqa and some employees of the Forest Department were present and demarcation was conducted after fixing the points with the help of Jareb and on a portion of land measuring 3.13 bighas comprising in Khasra Nos. 2682 and 380 unauthorized possession of the petitioner was noticed, tatima of which was prepared through the Patwari halqa. PW-2 Sh.Partap Chand, Kanungo had stated that he along with Tehsildar Kullu and officials of the Forest Department, namely, Range Officer, Block Officer and guard of the area, Naib Tehsildar of the Forest Department and Patwari halqa went to the spot and after demarcation, illegal possession of the petitioner was

found on land measuring 3.13 bighas. He had also stated that site plan of the spot was prepared by the Patwari halqa. PW-3 Sh.Jai Singh, Patwari, Patwar Circle Banjar Tehsil had stated that he prepared the plan about the illegal possession of the petitioner (mark B). He had stated that at the time of demarcation Tehsildar Kullu, Girdwar, Kanungo, Naib Tehsildar, Forest Range Officer, Block Officer and Guard halqa were present. Similarly, PW-4 Sh.Thakur Dass, Forest Guard had submitted that he along with Tehsildar Kullu, Naib Tehsildar Forest, Kanungo and Patwari of revenue department, Range Officer and Block Officer, Jari along with witnesses went to Harkandi-III Forest and Tehsildar Kullu conducted demarcation. According to the demarcation the petitioner was found in illegal possession of land measuring 3.13 bighas and she was also found in illegal possession of deodar trees and broad leaves. The petitioner had appeared herself as RW-1 and stated that land in question was earlier in possession of her husband. She has admitted her possession on the land. She had also stated that regarding her possession neither the local residents nor the state Government had ever objected.

What emerges from the statements of the PWs and RW-1 is that the petitioner is in illegal possession of the land, measuring 3.13 bighas situate on Khasra Nos. 378, 380, 381 and 2682 qua which the demarcation in accordance with law has been conducted by the revenue agency in the presence of the forest officials. The petitioner had admitted her possession on the land but had put up a plea of adverse possession. The fact that she was not present on the spot at the time of demarcation will not be of any consequence after her admission of possession on the land in question. The Collector-cum-D.F.O. on the basis of the evidence on record had come to the just conclusion that the petitioner was in illegal possession of the land, measuring 3.13 bighas. The learned Collector-cum-D.F.O. had considered the plea of adverse possession raised by the petitioner but due to non production of any evidence had not accepted the

same. The learned Commissioner (Revenue) Himachal Pradesh had held that the demarcation carried out by the revenue agency in the presence of the forest officials was in accordance with law. The learned Commissioner (Revenue) had given the findings that the plea raised by the appellant before him was untenable with regard to the mode of demarcation when the petitioner had herself admitted the fact of possession over the land. The petitioner had not placed any material before the Appellate Authority to substantiate her plea of adverse possession. The petitioner was also not in a position to rebut the record of rights to whom the presumption of truth is attached during the course of hearing before the commissioner (Revenue) as well as Collector-cum-D.F.O.

The upshot of the above discussion is that there is no merit in the writ petition and the same is dismissed. The interim order dated 4.9.2002 confirmed on 25.2.2003 shall stand vacated. The respondents are directed to implement the order dated 10.6.2002 Annexure P-1 within a period of four weeks from today.

No costs.

June 12 ,2007(g) **(Rajiv Sharma), J.**